

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSEPH JUAN BUTTERCASE,

Plaintiff,

vs.

SCOTT R. FRAKES, Director,
Nebraska Department of Correctional
Services,

Defendant.

8:18-CV-131

ORDER

JOSEPH J. BUTTERCASE,

Plaintiff,

vs.

ERIN ELIZABETH TANGEMAN,
Bar Number 22924,

Defendant.

8:21-CV-435

ORDER

This matter is before the Court on the Court's own motion pursuant to [28 U.S.C. §§ 455\(a\) & \(b\)](#), which set forth the circumstances in which a judge of the United States shall disqualify himself from a proceeding.

The plaintiff, in case no. 8:18-cv-131, is seeking federal habeas corpus relief from his state court conviction. In case no. 8:21-cv-435, he accuses the attorney for the State of Nebraska in the habeas case of conspiring against him to his detriment. See [filing 1](#).

Although Judge Kopf is not named as a defendant in case no. 8:21-cv-435, he recused himself because the complaint accuses him of conspiring with the

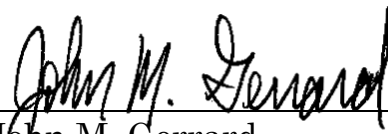
defendant. See [filing 5](#). Nor am I named as a defendant, but the complaint accuses me (in my then-capacity as Chief Judge) of having "tolerated, covered up, and failed to remedy" the alleged misconduct. [Filing 1 at 6](#).

As a result, case no. 8:21-cv-435 could implicate the circumstances described in § 455(a) and (b)(1), requiring my recusal. To begin with, the standard of review would require me, on initial review or a motion to dismiss, to assume the truth of the plaintiff's allegation that I participated in a civil conspiracy against the plaintiff. See [Rinehart v. Weitzell](#), 964 F.3d 684, 688 (8th Cir. 2020). Furthermore, in the event that this case proceeds beyond the pleadings stage, I could not preside over a matter in which I might be a material witness. See [Tyler v. Swenson](#), 427 F.2d 412, 415-16 (8th Cir. 1970). And because these two cases are clearly intertwined, it is appropriate for me to recuse myself from case no. 8:18-cv-131 as well. Accordingly,

IT IS ORDERED that I recuse myself from these cases and that the Clerk of the Court shall refer these matters to the Chief Judge for reassignment.

Dated this 18th day of November, 2021.

BY THE COURT:



John M. Gerrard
United States District Judge